

United States District Court
For the
Middle District of North Carolina

THERRON J. PHIPPS,)
Plaintiff,)
v.) Civil Action No. 1:13-cv-910
CITY OF GREENSBORO, and)
KENNETH MILLER, in his official)
Capacity as Chief of Police of the City)
of Greensboro Police Department,)
Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, City of Greensboro (“City”) and Kenneth Miller in his official capacity as Chief of Police of the City of Greensboro Police Department (“Chief Miller”) (collectively “Defendants”), by and through their undersigned counsel, hereby remove this action from the Superior Court of Guilford County, North Carolina to the United States District Court for the Middle District of North Carolina. In support of this Notice of Removal and as required by 28 U.S.C. § 1446(a), Defendants set forth the following short and plain statement for the grounds for removal:

I. Background

1. On March 11, 2013, Plaintiff filed a complaint in the Superior Court of Wake County, North Carolina. In accordance with 28 U.S.C. § 1446(a), a copy of all process,

pleadings and orders received by Defendants are attached as Exhibit A. The complaint predominantly alleged violations of state law such as: negligent infliction of emotional distress; violation of the North Carolina Equal Employment Practices Act; and violation of the North Carolina Constitution. Plaintiff's initial complaint also alleged a violation of Title VII of the Civil Rights Act of 1964. Plaintiff served Defendants with the complaint on April 11, 2013. Defendants were granted an extension of time up to and including June 10, 2013, to Answer or respond to the complaint.

2. On June 6, 2013, Defendants filed a Motion to Dismiss Plaintiff's complaint for improper venue or in the alternative to change the venue to Guilford County, North Carolina.
3. On July 10, 2013, the parties filed a consent motion to change venue to Guilford County, North Carolina. On July 18, 2013, the Presiding Superior Court Judge for Wake County entered an Order changing the venue of this action to Guilford County, North Carolina.
4. On August 6, 2013, Defendants filed a Motion to Dismiss Plaintiff's complaint for failure to state a claim upon which relief can be granted. Defendants' Motion was scheduled to be heard on September 16, 2013. Plaintiff filed an amended complaint on the morning of the hearing.
5. Title VII of the Civil Rights Act of 1964 is the only claim asserted in Plaintiff's amended complaint.

II. Removal Is Timely

6. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days after the receipt by Defendants of a copy of the pleading setting forth the claim for relief upon which such action or proceeding is based. All Defendants who have been properly joined and served consent to the removal of the action in accordance with 28 U.S.C. § 1446(b)(2).

III. The Venue Requirement Is Met

7. The venue for this removal is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division corresponding to the place where the state court action was pending, namely Guilford County, North Carolina.

IV. Removal Jurisdiction

8. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because the resolution of Plaintiff's claim will require the adjudication of disputed questions of federal law, namely Title VII of the Civil Rights Act of 1964.

V. Notice of Removal to the Superior Court

9. Concurrently with this Notice of Removal, Defendants will file a copy of this Notice with the Superior Court of Guilford County, North Carolina. A copy of the written notice of the Notice of Removal to Federal Court is attached hereto as Exhibit B. In accordance with 28 U.S.C. § 1446(d), Defendants will give written notice to Plaintiff by contemporaneously serving this Notice of Removal on Plaintiff.

VI. Conclusion

10. For the foregoing reasons, Defendants respectfully request that this civil action be, and is hereby, removed to the United States District Court for the Middle District of North Carolina, that this Court assume jurisdiction of this civil action, and that this Court enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

This the 14th day of October, 2013.

/s/ Jamiah K. Waterman
North Carolina State Bar No. 32984
City of Greensboro
Post Office Box 3136
Greensboro, North Carolina 27402
Jamiah.Waterman@Greensboro-NC.Gov
336.433.7301
336.373.2511 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that the DEFENDANTS' NOTICE OF REMOVAL was served upon Plaintiff by first-class United States mail to the following address for Plaintiff's counsel of record:

Attorney Brad Hill
Attorney James Hairston, Jr.
Hairston Lane Brannon, P.A.
230 Fayetteville Street, 3rd Floor
Raleigh, North Carolina 27601

This the 14th day of October, 2013.

/s/ Jamiah K. Waterman
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